

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Title VII Retaliation

Plaintiff brought claims of retaliatory discharge under federal and state law, and a state common-law wrongful discharge claim, against defendant. Judge Hubel recommended that defendants' summary judgment motion be denied because of disputed fact issues concerning whether plaintiff engaged in protected conduct and adverse employment actions directed at plaintiff. Notably, Judge Hubel rejected defendants' argument that the plaintiff's passing along a complaint of a subordinate did not constitute "opposition" sufficient to support a retaliation claim. Judge Hubel concluded that given the plaintiff's duty to report potentially actionable conduct, it would be inconsistent with the overall remedial purpose of Title VII to conclude that such a report is not protected activity in a retaliation claim.

Applegate v. West Hills

Convalescent Center, CV-04-715-HU.  
(Findings & Recommendation, 8/24/05; Order adopting by Judge Panner, 9/30/05).  
Plaintiff's Counsel: Tom Steenson  
Defense Counsel: Kevin Coan

## Fair Labor Standards Act

Defendant filed a second motion to dismiss plaintiffs' amended fourth claim for relief pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs filed a complaint against their former employer pursuant to FLSA alleging failure to pay overtime wages. Plaintiffs' fourth claim for relief was filed pursuant to ORS 652.610 and 652.615.

Judge Aiken found for the second time that plaintiffs failed to allege that defendant made any deductions from their gross wages in violation of the statute. The court dismissed plaintiffs' claim with

prejudice.

Sears v. Blackwell's North America, Inc., CV 05-6206-AA  
(Opinion, Jan. 13, 2006)  
Plaintiff's Counsel: Paul Meadowbrook  
Defense Counsel: Elizabeth Schleuning

## Fair Debt Collections Practices Act

The dispute arose from whether a Deed of Trust securing a home improvement loan had been notarized and whether it had been discharged in plaintiff's Chapter 7 bankruptcy. After the bankruptcy, a debt collection company attempted to collect the amount due under the loan and threatened to foreclose the Deed of Trust. Plaintiff sought declaratory relief against the debt collection company, as well as damages for alleged violations of the Fair Debt Collections Practice Act, the Oregon Unlawful Debt

## 2 The Courthouse News

Collections Practices Act, the Notary Act of Oregon, slander of title and fraud. Judge Stewart granted the motions for summary judgment filed by the debt collection company and the notary public and *sua sponte* granted summary judgment to the remaining defendant in the case.

Perera v. Blue Ribbon Installations, Inc., CV 04-1668-ST  
(Findings & Recommendation, 10/7/05, adopted on 11/21/05 by Judge Jones)  
Plaintiff's Counsel: Michael Slominski  
Defense Counsel: Douglas Pickett

## Insurance Law

Defendant Travelers Indemnity Insurance Co. moved for summary judgment pursuant to ORS 30.140 arguing that the subcontractor's additional insurance requirements are invalidated, thus relieving defendant of the duty to defend or indemnify the plaintiff. Plaintiff cross-moved for summary judgment arguing that defendant has a duty to defend plaintiff.

Judge Aiken granted plaintiff's summary judgment motion and denied

defendant's summary judgment motion finding that ORS 130.140(2) permits construction agreements that require a subcontractor to obtain an "additional insured" endorsement indirectly indemnifying the general contractor for the subcontractor's fault in causing injury.

Hoffman Construction Co. v. Travelers Indemnity Ins. Co., CV 05-465-AA  
(Opinion, Nov. 28, 2005)  
Plaintiff's Counsel: John Ostrander  
Defense Counsel: Michael Seidl

## ADEA

Defendant moved to dismiss the case based on the plaintiff's failure to file a charge with the Oregon Bureau of Labor and Industries within the statutory period. Judge Stewart refused to equitably toll the statutory deadline because the plaintiff had constructive notice of the ADEA filing requirements, and granted defendant's motion to dismiss.

Taylor v. West Oregon Coop., Inc., CV 03-1311-ST  
(Opinion, 10/21/05)  
Plaintiff's Counsel: Lauren Paulson  
Defense Counsel: Dan

Barnhart

**Recent Jury Verdicts**  
Lovell v. Quadra Chemicals, CV 05-288-PA, 12/16/05, plaintiff truck driver alleged he was injured by inhaling hydrochloric acid fumes from a leaking tank. Defendant admitted it was responsible for the leak, but denied anyone was injured as a result. Defense verdict.

Sexton v. Fleetwood Motor Homes, CV 04-1357-JE, 12/2/05, plaintiffs, purchasers of luxury motor home, brought a Lemon Law claim alleging they were entitled to get their money back. Defense verdict.

Friday v. City of Portland, CV 00-278-JE, 11/28/05, plaintiff, a Portland Police officer, alleged that the City retaliated against her for complaining of sexual harassment. The court had previously granted summary judgment for the City on plaintiff's other claims. Defense verdict.